

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CDBD HOLDINGS, INC.,

Plaintiff,

-against-

ELIZABETH SLAVUTSKY, et al.,

Defendants.

USDC SDNY
DOCUMENT
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DATE FILED: 12/3/2024

23-CV-71 (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

On August 23, 2024, plaintiff filed its motion for default judgment (Dkt. 116) and supporting papers, and on September 18, 2024, plaintiff noted that the motion was unopposed. (Dkt. 121.) Nonetheless, the Court cannot resolve the motion on the present record without clarification as to the amounts of principal and interest plaintiff seeks and the manner in which it has calculated those figures. Specifically:

1. The Amended Complaint (Dkt. 41), Demand Notice (Dkt. 41-7), [Proposed] Default Judgment (Dkt. 117), and Affidavit of Christopher Diamantis (Dkt. 118-1) all state that the "unpaid principal balance" on the Note Obligation (as that term is used in the Amended Complaint) is \$5,905,869.00, to which is added (a) "note interest through 11/16/17" of \$288,569.37 and (b) "default interest" thereafter in varying amounts, depending on the date of the filing.

2. The Court observes that the "unpaid principal balance" figure appearing in the filings listed above is slightly different from the "aggregate principal amount" of \$5,859,500.00 set forth in the 11/7/17 Note Agreement (Dkt. 41-1, § 2.1.1) and Schedule 2 attached thereto. Please explain the difference.

3. Please explain the calculation of the \$288,569.37 in "note interest through 11/16/17." The Court understands that the pre-default interest rate was 7% (*see* 11/7/17 Note Ag.

§ 4.1.1), but cannot verify that the correct figure is \$288,569.37 without additional detail, including the start date and the calculation used.

4. Please explain the calculation of the "default interest," and bring it current. The Court understands that the default interest rate was 3%, "plus the interest rate otherwise accruing or payable thereon" (*see* 11/17/17 Note. Ag. § 4.1.1), but cannot verify that the figures provided are (or were, as of the date of each filing) correct without additional detail, including the calculation used.

Plaintiff is reminded that, after default, the Court must accept as true all of the well-pleaded factual allegations in the Amended Complaint as to liability, but not as to damages. *See Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009); *Cotton v. Slone*, 4 F.3d 176, 181 (2d Cir. 1993); *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992). "There must be an evidentiary basis for the damages sought by plaintiff, and a district court may determine there is sufficient evidence either based upon evidence presented at a hearing or upon a review of detailed affidavits and documentary evidence." *Cement & Concrete Workers Dist. Council Welfare Fund, Pension Fund, Annuity Fund, Educ. & Training Fund & Other Funds v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012); *see also House v. Kent Worldwide Mach. Works, Inc.*, 359 F. App'x 206, 207 (2d Cir. 2010) (summary order) ("[T]here must be a basis upon which the court may establish damages with reasonable certainty."); *McLaughlin v. Barron*, 2018 WL 1872535, at *2 (S.D.N.Y. Jan. 24, 2018) (after default, plaintiffs must substantiate their damages claim with "admissible, authenticated evidence"), *adopted*, 2018 WL 993627 (S.D.N.Y. Feb. 20, 2018). Consequently, plaintiff must supply the information described above in the form of admissible evidence (*e.g.*, affidavits, declarations, properly authenticated business records or other exhibits).

Plaintiff's supplemental submission is due by **December 15, 2024** (but may of course be submitted earlier). If the submission includes calculations in Excel (or a comparable program), plaintiff must submit an electronic copy in native format, by email, sent to moses_nysdchambers@nysd.uscourts.gov.

Dated: New York, New York
December 3, 2024

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge